IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29-06-2006

CORAM:

THE HONOURABLE MRS.JUSTICE PRABHA SRIDEVAN

W.P.NO.18601 of 2006
and
M.P.No.1 of 2006

Mangal Bhaskaran,
Prop.Kamala Touring Taxies,
Thiruvavuduthurai Village,
Mayiladurai Taluk,
Nagapattinam District. . . Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. by its Secretary,
   Department of Information and Broadcasting,
   Fort St. George, Chennai 600 009.

2. The District Collector,
   Nagapattinam District,
   Nagapattinam. . . Respondents

This Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for the records of the second respondent in Na.Ka.19791/2006/C1 and quash the order dated 31.05.2006 passed therein and further direct the second respondent to renew the licence of the petitioner and issue "C" Form to the petitioner under the Tamil Nadu Cinema (Regulations) Act, 1955.

For Petitioner : Mr.G.Veerapathiran
For Respondents : Mr.A.Edwin, Govt.Advocate

ORDER

Mr.A.Edwin, learned Government Advocate takes notice for the respondents.

2. The writ petitioner is aggrieved by the order dated 31.05.2006, by which the second respondent declined to receive the "C" Form licence in his favour on the ground that he is not a tenant in lawful possession.

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3. Mr.G.Veerapathiran, learned counsel for the petitioner submitted that till date, the Thiruvaduthurai Adinam has not taken steps to evict him, though it is true that the term of lease has expired. It is also his case that the Theatre belongs to him. Learned counsel submitted that the landlord cannot evict him except by due process of law as he is in possession that in possession of the premises, which is not without any semblance of right. In these circumstances, it cannot be held that he is not in lawful possession.

4. The learned counsel for the petitioner relied on (1974) 1 SCC 48 (M.C.CHOCKALINGAM AND OTHERS V. V.MANICKAVASAGAM AND OTHERS), 1989 Writ L.R. 41 (MEENAKSHI AMMAL V. THE CHIEF SECRETARY TO GOVERNMENT AND OTHERS), 1986 L.W. 661 (MANICKAVASAGAM V. THE BOARD OF REVENUE), 1990 S.C. 2292 (KRISHNA KISHORE FIRM V. GOVT. Of A.P.), 1995 (II) CTC 146 (PALACE-DE-WALES V. THE STATE OF TAMILNADU AND ANOTHER) and 1994 (2) M.L.J. 239 (SRI HANUMAN VAHANA PANCHAPARVA KATTALAI ATTACHED TO SRI VENKATACHALAPATHI PERUMAL TEMPLE V. SUBRAMANIAN).

In (1974) 1 SCC 48 (Supra), the lessee was evicted and he claimed that he was evicted unlawfully and therefore entitled to restoration of possession under Section 6 of the Specific Relief Act. The Supreme Court held that Section 6 does not declare the possession of an evicted person as one in lawful possession. The learned counsel submitted that though on facts this decision may not apply to him, there are observations in that judgment where it is stated that lawful possession is not litigious possession, but it must have some legal right to possess and since he has a legal right to continue in possession, he is entitled to press this observation of the Supreme Court to his advantage.

5. Learned counsel also relied on A.I.R. 1990 SC 2292 (Supra), where it was held that the appellant who enters into an agreement of sale before the expiry of lease with one of co-lessors can certainly claim that he was in unlawful possession and his application for renewal of licence must be considered, treating him to be in unlawful possession. 1986 L.W. 661 (Supra) also deals with the distinction between lawful possession, 'unlawful possession' and 'wrongful possession' and merely because the lease period had expired, a tenant cannot be considered to be in unlawful possession. In 1995 (II) CTC 146 (Supra), it was held by the learned Judge that a lessee in possession after expiry of lease period cannot be said to be in unlawful possession. Similarly, in 1994 (2) M.L.J. 239 (Supra) it was held that the lessee overstaying cannot be considered to be in unlawful possession and is entitled to a renewal.

6. Learned Government Advocate referred to (1995) 5 SCC 698 (R.V.BHUPAL PRASAD V. STATE OF A.P.), which is subsequent to all the judgments cited above. The learned Government Advocate also submitted that the petitioner is continuing in possession only by virtue of the order obtained in the suit for injunction filed by him.

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7. In (1995) 5 SCC 698 (Supra), the matter arose under the Andhra Pradesh Cinemas (Regulation) Rules, which is almost identical to the Tamil Nadu Rules. The Supreme Court in that case, held that:

> "In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejectd in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry."

Therefore, the fact that until the landlord takes steps to evict him by due process of law, he continues in possession is not relevant. It is also seen from the impugned order that the landlord namely, the Mutt had objected to the grant of licence.

8. The relief sought for by the petitioner cannot be granted, in view of the legal position as laid down by the Supreme Court in the above case.

The writ petition is dismissed. No costs. Consequently, connected M.P. is closed.

sgl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary,
   The State of Tamil Nadu,
   Department of Information and Broadcasting,
   Fort St. George, Chennai 600 009.
2. The District Collector,
   Nagapattinam District, Nagapattinam.

1 cc To Mr.G.Veerapathiran, Advocate, SR.27859.
1 cc To The Government Pleader, SR.27744.

W.P.No.18601 of 2006

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RVL 06.07.2006

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